

## **17 KAR 3:010. Calculation of resident charges at state veterans' nursing homes.**

RELATES TO: KRS 40.320, 40.325

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 requires the Commonwealth to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the requirements for calculating resident charges for room and care services within the state veterans' nursing homes.

Section 1. Definitions. (1) "Ability to pay" means the total amount of available assets and available monthly income on the part of the resident and spouse.

(2) "Administrator" means the person in charge of a state veterans' nursing home, or that person's specific designee.

(3) "Assets" means the market value of items owned by the resident and spouse as applicable including:

- (a) Stocks, bonds, and notes;
- (b) Individual retirement accounts;
- (c) Bank deposits;
- (d) Savings accounts;
- (e) Cash;
- (f) Real estate;
- (g) Cash value of life insurance policies; or
- (h) Face value of prepaid burial plans.

(4) "Available assets" means the total assets of the resident and spouse less the applicable exclusions established in Section 2(5) of this administrative regulation.

(5) "Available monthly income" means the gross monthly income of the resident and spouse less the applicable exclusions established in Section 2(4) of this administrative regulation.

(6) "Community spouse" means the spouse of a resident who is not herself or himself a resident of a state veterans' nursing home.

(7) "Dependent" means an individual less than eighteen (18) years of age who is in the resident's care.

(8) "Exclusions" means an amount deducted from a resident and spouse's gross monthly income and total assets to determine the ability to pay for services rendered by a nursing home.

(9) "Gross monthly income" means the amount of income received by the resident and spouse on a monthly basis plus those amounts originally withheld from wages and earnings.

(10) "Income" means funds received by the resident and spouse, including:

- (a) VA, U.S. Civil Service, U.S. Railroad, Military, Social Security, and any other form of service-related compensation or pension;
- (b) Wages from all employers;
- (c) Interest and dividends;
- (d) Workers' compensation; and
- (e) Rental or other business income.

(11) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(12) "Resident" means a veteran admitted to a state veterans' nursing home.

(13) "Spouse" means the wife or husband of a resident who is not divorced or legally separated from the veteran.

(14) "Withholdings" means those dollar amounts originally deducted from monthly income, such as:

- (a) Deductions for income taxes;
- (b) Deductions for health and life insurance premiums; and
- (c) Deductions for retirement plans.

Section 2. Determination of the Ability to Pay for Services Rendered at State Veterans' Nursing Homes. (1)(a) Except as provided in paragraph (b) of this subsection, the nursing home shall compute the ability to pay for each resident who is admitted to the facility for care in accordance with this administrative regulation.

(b) If the provisions of 17 KAR 3:040 are applicable to a resident, the nursing home shall compute the ability to pay for that resident in accordance with 17 KAR 3:040.

(2) The amount a resident is required to pay for services shall be the lesser of:

- (a) The maximum charge established in 17 KAR 3:020; or
- (b) The amount the resident is deemed able to pay in accordance with this administrative regulation.

(3) The nursing home shall determine an ability to pay amount for each resident based on the following factors:

- (a) Available assets; and
  - (b) Available monthly income.
- (4) The following shall be authorized exclusions from gross monthly income:
- (a) Medicare B insurance premium (resident only);
  - (b) Health insurance premium (resident only), not to exceed \$150 per month;
  - (c) A resident's personal needs allowance of \$150 per month;
  - (d) A maintenance allowance for a community spouse of \$1,500 per month;
  - (e) A maintenance allowance of \$400 per month for each dependent;
  - (f) Court-ordered support payments to an ex-spouse, not to exceed \$400 per month; or
  - (g) Court ordered support payments for a child less than eighteen (18) years of age, not to exceed \$400 per child per month.

(5) The following shall be authorized exclusions from assets:

- (a) Primary residence (including any contiguous land);
- (b) A resident burial exclusion consisting of cash, life insurance policy, or prepaid burial plan with a combined value of \$10,000 or less;
- (c) A spousal exclusion consisting of an allocation of assets totaling \$100,000 (or a lesser amount if sufficient assets are not available) on the date the resident is admitted;
- (d) All household equipment and personal effects owned by the resident and spouse;
- (e) One (1) automobile; and
- (f) Any outstanding debts on the day of admission to the nursing home.

(6) If it is determined that a resident disposed of a nonexcluded asset by gift, or for an amount less than fair market value, during the two (2) year period preceding the date of admission, the monthly charge for room and care shall be computed as if the resident retained ownership of the asset as of the date of admission.

(7) The monthly spousal allowance and dependent's allowance shall be utilized by the resident to help meet the financial needs of his or her spouse or dependent. If the facility becomes aware that these allowances are not being utilized for their intended purpose, the resident's monthly charge for room and care shall be recalculated as if the resident were unmarried and without dependents.

(8) If a married couple is admitted to a nursing home, the monthly charge shall be computed as if each resident were unmarried and without dependents.

(a) All assets and debts of the residents shall be allocated at a rate of fifty (50) percent to each individual.

(b) All income earned by the couple shall be considered to be earned at a rate of fifty (50) percent to each.

(c) Only one (1) primary residence and one (1) automobile shall be excluded for purposes of computing available assets for the couple.

Section 3. Calculation of the Amount Resident is Able to Pay. (1) The nursing home shall calculate the ability to pay amount utilizing the Ability to Pay Worksheet, OKVC Form #2.

(a) The Ability to Pay Worksheet, OKVC Form #2, shall be explained to the resident or person responsible for the resident and signed by all parties.

(b) A copy of the Ability to Pay Worksheet, OKVC Form #2, shall be provided to the resident or person responsible for the resident.

(2) The amount of available assets shall be determined as follows:

(a) Calculate the total amount of assets owned by the resident and spouse;

(b) Apply the exclusions established in Section 2(5) of this administrative regulation; and

(c) The remaining assets shall equal the available assets.

(3) The amount of available monthly income shall be determined as follows:

(a) Determine the amount of total monthly income for the resident and spouse;

(b) Identify all withholdings and add that total to total monthly income to determine gross monthly income;

(c) Apply the exclusions established in Section 2(4) of this administrative regulation to the gross monthly income total; and

(d) The remaining income shall equal the available monthly income.

(4) The resident's monthly charge for room and care shall be computed as follows:

(a) Add the available assets to the available monthly income to determine the ability to pay amount;

(b) If the ability to pay amount is between zero dollars and the facility's maximum charge, the resident's monthly charge shall equal the ability to pay amount; and

(c) If the ability to pay amount is equal to or greater than the facility's maximum charge, the resident's monthly charge shall equal the facility's maximum charge.

(5) After the resident's ability to pay is determined, a Patient or Responsible Party Financial Agreement, OKVC Form #3, shall be completed.

(a) The Patient or Responsible Party Financial Agreement, OKVC Form #3, shall be explained to the resident and signed by all parties.

(b) If the resident or person responsible for the resident refuses to sign, this refusal shall be noted on the Patient or Responsible Party Financial Agreement, OKVC Form #3, including the date the form was discussed.

(c) Refusal to sign the Patient or Responsible Party Financial Agreement, OKVC Form #3, shall result in the resident paying the maximum charge for room and care.

Section 4. Revisions to Ability to Pay Amounts. (1) Nursing home staff shall update a resident's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes include, for example:

(a) Income revisions;

(b) Asset revisions including exhaustion of available assets;

(c) Changes in allowed exclusions; and

(d) Identification of previously undisclosed income or assets.

(2) Upon a change in the ability to pay information, a revised Ability to Pay Worksheet, OKVC Form #2, shall be prepared along with a revised Patient or Responsible Party Financial Agreement, OKVC Form #3. The revised forms shall be presented to the resident in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) Failure of the resident to disclose financial information required to compute his or her ability to pay shall result in the resident paying the maximum charge for room and care.

(2) If the resident or person responsible for the resident fails to sign the assignment provision contained in the Patient or Responsible Party Financial Agreement, OKVC Form #3, the maximum charge for room and care shall be assessed.

Section 6. Payment Hardship and Appeal Procedures. (1) Payment hardships.

(a) If the resident or person responsible for the resident believes that the ability to pay amount will result in a financial hardship, the resident or responsible person may request to make installment payments.

(b) This request shall be made in writing to the nursing home's administrator and shall include documentation to support the claimed hardship.

(c) The administrator shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the resident or person responsible for the resident is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, the resident or person responsible for the resident may appeal the determination to the Executive Director, Office of Kentucky Veterans' Centers, 1111 Louisville Road, Frankfort, Kentucky 40601. An appeal shall be submitted within thirty (30) days of the ability to pay or payment plan being calculated.

(b) The executive director shall review the appeal and issue a determination within fifteen (15) days of receipt.

(c) If the resident or person responsible for the resident is dissatisfied with the informal resolution, the resident or person responsible for the resident may file an appeal. An appeal shall be submitted within thirty (30) days of the executive director's response to the Commissioner, Kentucky Department of Veterans Affairs, 1111 Louisville Road, Frankfort, Kentucky 40601. If the commissioner is unable to resolve the appeal request informally, he shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the resident's or responsible person's position and include all necessary supporting documentation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Ability to Pay Worksheet", OKVC Form #2, October 10, 2006; and

(b) "Patient or Responsible Party Financial Agreement", OKVC Form #3, April 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (33 Ky.R. 1464; Am. 1786; eff. 2-2-2007; 39 Ky.R. 1897; 2310; eff. 7-5-2013.)